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In The
Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF *AMICI CURIAE* MEMBERS OF ASIAN AMERICANS ADVANCING JUSTICE ET AL., IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI*[1]

This brief is submitted by members of Asian Americans Advancing Justice ("Advancing Justice"), an affiliation that includes the following nonprofit, nonpartisan organizations: Advancing Justice – Los Angeles, Advancing Justice – Asian Law Caucus (SF), Advancing Justice – Asian American Justice Center (DC), and Advancing Justice – Chicago. Through litigation, direct legal services, policy advocacy, community outreach and education, and organizing, Advancing Justice's mission is to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders ("AAPIs") and other underserved communities. Members of Advancing Justice routinely file *amicus curiae* briefs in cases in this Court and other courts, including an *amicus curiae* brief in *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013) ("*Fisher I*").

Advancing Justice is joined on this brief by one hundred and fifty (150) civil rights groups, advocacy organizations, bar associations, business associations, academic institutions and professionals, and student

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

organizations (collectively, "*Amici*"). For a list and description of the various *Amici* joining this brief, see Appendix A. *Amici* have long-standing histories of serving the interests of Asian Americans, Native Hawaiians, and Pacific Islanders.

The undersigned *Amici* – like the majority of AAPI voters in California, Michigan, Washington, and other states who have opposed referenda to eliminate race-conscious programs – support the proper use of race-conscious programs.[2] National opinion polls consistently show that a majority of AAPIs are in favor of race-conscious programs. *See infra* Part III.C. This support continues today, as numerous organizations representing a wide swath of the AAPI community join this *amicus curiae* brief in support of Respondent and race-conscious programs designed to improve equal access for all. *Amici* recognize that AAPIs and other minority groups have fought together against racial discrimination and for greater civil rights, protections, justice, and equality in this country. *Amici* recognize that AAPIs have obtained greater rights and opportunities as a result of historic civil

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[2] One *amicus curiae* brief in support of Petitioner was filed on behalf of 117 Asian American organizations opposed to any form of race-conscious university admissions "for any non-remedial purpose, including purportedly benign rationales." *See* Brief of *Amicus Curiae* Asian American Legal Foundation ("AALF Br.") at 1. These organizations, however, do not represent the majority view of AAPIs in the United States, who have repeatedly supported affirmative action over the years. *See infra* Part III.C.

rights struggles led by and with other minority communities.[3]

SUMMARY OF ARGUMENT

Amici AAPI advocacy organizations submit this brief in support of Respondent University of Texas at Austin ("UT Austin"), a state institution whose mission for many years has been to train leaders for the State of Texas. *See Sweatt v. Painter*, 339 U.S. 629, 634 (1950). "[L]ike so many educational institutions across the Nation," UT Austin's admissions process includes an individualized review component that allows for the flexible consideration of race as one of many factors in comprehensively evaluating some applicants. *Fisher I*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting). *Amici* support this kind of thoughtful, benign consideration of race to increase equal opportunity and improve racial diversity in university admissions.

Even though UT Austin's program is modeled closely on others sanctioned previously by this Court, Petitioner Abigail Fisher and her *amici* are attempting to invalidate UT Austin's program as part of a larger effort to roll back all such race-conscious

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[3] *See, e.g.*, Stewart Kwoh & Julie A. Su, *A Shared History And Vision*, New America Media, Mar. 27, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=5865061e5e6d42458536481ade0be453.

programs. To bolster their ideological challenge, they seek to portray AAPIs as victims who are categorically "excluded" and "burdened" by affirmative action programs. The undersigned *Amici* reject these unfounded claims that AAPIs are harmed by such programs, and categorically oppose such efforts to use the AAPI community as a wedge group to curtail opportunities for racial minorities.

First, Petitioner and her *amici* disregard the reality that affirmative action programs have opened and continue to open doors for AAPIs in higher education. Instead, they peddle a form of revisionist history where AAPIs achieved educational parity solely by dint of their own efforts and "merit." This ignores, however, the fact that AAPIs historically benefited from inclusion in race-conscious admission programs, that certain AAPI subgroups continue to need and benefit from such programs today, and that all AAPI students benefit from more racially diverse (and less racially hostile) college campuses.

Second, Petitioner and her *amici* advocate a form of "color-blind" admissions that would force universities to willfully ignore race even while they attempt to comprehensively evaluate applicants. Unfortunately, this conception of "color-blindness" is a form of "reality-blindness." The undersigned *Amici* believe that race is a legitimate consideration when universities assess many different indices of past disadvantage and future potential, cannot be replaced by other considerations such as socioeconomic status, and provides important context for other admissions

criteria such as standardized test scores. While race remains relevant in American life, universities should not be handicapped and forced to disregard this relevant (and often important) consideration in their attempts to accurately and holistically evaluate applicants.

Third, Petitioner and her *amici*'s challenge is based on a generalized objection to all race-conscious programs, not evidence specific to UT Austin. Notwithstanding their baseless accusations, the actual facts demonstrate that UT Austin's holistic review process expressly includes, and in no way harms, AAPIs:

- There was *no* drop in AAPI overall admissions to UT Austin, even after the consideration of race in 2005;
- There was *no* drop in AAPI *holistic* admissions to UT Austin, even after the consideration of race in 2005;
- Those AAPI holistic admissions included many AAPIs *with below-average test scores*, before and after the inclusion of race in 2005; and
- The inclusion of race in holistic review in 2005 did *not* cause or increase any existing "test score gap" between AAPI applicants and other applicants.

Where *none* of the trends that would suggest "negative action" designed to harm AAPIs is borne out by

the record, AAPIs should not be used as an excuse for dismantling crucial affirmative action programs.

Accordingly, like the consistent majority of AAPIs who have supported affirmative action over the years, the undersigned *Amici* affirm the importance of race-conscious policies such as UT Austin's. And while there is no evidence that UT Austin excludes AAPIs from benefitting from holistic review, *Amici* support such programs even when AAPIs are not directly included. Race-conscious programs have played, and continue to play, an important role in desegregating and diversifying higher education for all, and *Amici* stand by the promise of integrated and equal public education set forth in *Brown v. Board of Education*.

ARGUMENT

I. RACE-CONSCIOUS ADMISSIONS PROGRAMS HAVE OPENED THE DOORS TO HIGHER EDUCATION FOR ASIAN AMERICANS AND PACIFIC ISLANDERS.

Asian Americans and Pacific Islanders ("AAPIs"), African Americans, Latinos, and Native Americans share a history of racial segregation in education. Despite this shared history, Petitioner and her *amici* incorrectly argue that race-conscious admissions that

provide equal opportunity for African Americans and Latinos exclude or, worse, actively harm AAPIs.[4]

This *amicus curiae* brief, filed by those who have long served the interests of a wide range of AAPIs, aims to set the record straight. We do not live in a color-blind society. While "[t]he enduring hope is that race should not matter[,] the reality is that too often it does." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 787 (2007) (Kennedy, J., concurring in part). Because of that reality, race-conscious programs have been and still are required to achieve meaningful diversity and equal access to higher education for racial minorities, including AAPIs.

A. Like other minority groups, AAPIs have suffered racial prejudice, and race-conscious admissions programs have helped counteract that prejudice and ensure equal access to higher education.

AAPIs, like African Americans, Latinos, and Native Americans, were subject to historic exclusion and *de jure* segregation in public education, particularly in California with its significant AAPI population.[5]

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[4] *See, e.g.*, Petitioner's Brief ("Pet. Br.") at 27; AALF Br. at 8-12.

[5] *See, e.g.*, *Gong Lum v. Rice*, 275 U.S. 78 (1927); *see also* Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical*

(Continued on following page)

Even after the California Supreme Court ruled in 1885 that the San Francisco School Board was required to provide Chinese students a public education,[6] the California Legislature provided separate, segregated schools for "children of Mongolian or Chinese descent" until 1947.[7] Although *Brown v. Board of Education*, 347 U.S. 483 (1954), invalidated the "separate but equal" doctrine, it did not end racial discrimination in public education or its harms for AAPI communities.

Contrary to arguments by Petitioner's *amici*, affirmative action programs ameliorate rather than exacerbate the long history of discrimination and exclusion experienced by AAPIs.[8] Race-conscious admissions programs played a critical role in opening

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View of the Discrimination of Chinese Americans in Public Schools, 5 Asian L.J. 181, 190-200 (1998).

[6] *See Tape v. Hurley*, 66 Cal. 473, 474 (1885).

[7] *See* Kuo, *supra* note 5, at 198 n.115. The *de jure* segregation of Chinese American children was upheld in *Wong Him v. Callahan*, 119 F. 381 (N.D. Cal. 1902) and remained in effect until 1947. *See Guey Heung Lee v. Johnson*, 404 U.S. 1215, 1215 (1971); *Gong Lum*, 275 U.S. at 87.

[8] Indeed, the history of facially discriminatory laws targeting AAPIs should not be conflated with race-conscious admissions programs designed to benefit minority groups. *Compare* AALF Br. at 6, 12-17 (improperly conflating UT Austin's program with "the long history of discrimination against Asian Americans, especially in education") *with* Brief of *Amicus Curiae* Asian American Legal Defense and Education Fund ("AALDEF Br.") at Part I.B (explaining difference between flexible "affirmative action" designed to improve overall diversity and "negative action" quotas targeting AAPIs to benefit White students).

the doors of public and private universities to many AAPIs in the 1960s and 1970s.[9] During this time, AAPIs were designated beneficiaries of various affirmative action programs, and thus gained admission to many reputable schools.[10] For example, affirmative action programs at University of California ("UC") Davis and UC Berkeley included AAPIs among their targeted minority groups. In addition to undergraduate admissions, AAPIs were also identified beneficiaries of race-conscious admissions programs at graduate and professional schools, including law schools at UC Berkeley (formerly Boalt Hall), UCLA, and University of Washington.[11] As the number of some AAPI subgroups admitted to the UC system increased, their inclusion as underrepresented groups under the race conscious admissions programs ended.[12] Yet race-conscious admissions programs at the UC's flagship schools continued to include Filipino

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[9] Sharon S. Lee, *The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California*, 15 Asian Am. L.J. 129, 132 n.16 (2008).

[10] *See id.* at 132-33; *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 274-75 (1978) (including AAPIs in UC Davis Medical School's race-conscious admissions program).

[11] William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 Asian L.J. 29, 30 (2000); Lee, *supra* note 9, at 136; *Smith v. Univ. of Wash.*, 392 F.3d 367, 379 (9th Cir. 2004).

[12] *See, e.g.*, Lee, *supra* note 9, at 143.

Americans through the 1990s.[13] In fact, some public universities, such as the University of Wisconsin, continue to include AAPI subgroups, such as Southeast Asians, in their affirmative action programs today.[14]

Even when not formally identified as an underrepresented group, holistic policies like UT Austin's allow for individualized consideration of how AAPIs' personal characteristics, including race, may benefit the institution. For example, "UT's holistic criteria can help Asian-American students who come from hardscrabble communities, such as the large Vietnamese refugee enclaves in Texas."[15] Additionally, universities may determine the need to improve equal access for AAPIs in majors or fields where they continue to be underrepresented.

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[13] *See* Gwendolyn Yip & Karen Narasaki, *Affirming the California Experience with Affirmative Action*, 1 Nexus J. Op. 22, 28 (1996); Lee, *supra* note 9, at 143 n.64.

[14] *See* Univ. of Wis.-Madison, *2014-2015 Data Digest* 8 (2015), *available at* https://apir.wisc.edu/datadigest/201415Digest/dd15_web.pdf (noting that targeted minority students include Southeast Asians).

[15] *See, e.g.*, Monica Rhor, *UT Affirmative Action Case Divides Asian-Americans*, Hous. Chron., Aug. 19, 2012, http://www.chron.com/news/houston-texas/article/Will-UT-affirmative-action-case-hurt-or-help-3798797.php.

B. Today, AAPI subgroups continue to need race-conscious admissions for access to the pipeline for success.

Contrary to the popular and insidious misconception that AAPIs are universally successful in the education context, many Southeast Asian, Native Hawaiian, and Pacific Islander subgroups suffer from school segregation,[16] inadequate preparation for college,[17] and other barriers to higher education.[18] As a result, these subgroups have lower than average

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[16] *See, e.g.*, Robert T. Teranishi, *Southeast Asians, School Segregation and Postsecondary Outcomes*, Comm'n on Asian Am. Research in Higher Educ., N.Y.U. (2004) (describing residential isolation and ethnic enclaves among poor immigrant communities from Southeast Asia and the attendant educational inequities); AALDEF Br. at Part II.B.1.

[17] *See, e.g.*, Asian American, Native Hawaiian, Pacific Islander Report, *The State of Higher Education in California* 27-31 (2015), *available at* http://www.advancingjustice-la.org/sites/default/files/2015-State-of-Higher-Education_AANHPI2.pdf (Native Hawaiians and Pacific Islanders experience lower college preparatory coursework completion rates; more than 60% of Cambodian and Filipino community college students enroll in pre-college-level, or remedial, work; nearly three-quarters of Hmong CSU admits need remediation).

[18] *Id.* at 22-25 (Hmong and Cambodian children have the highest rates of poverty in California; more than two-thirds of Hmong, Samoan, Cambodian, and Vietnamese freshmen received need-based financial aid; large proportions of Vietnamese, Thai, Korean, Chinese, and Cambodian communities have limited English proficiency).

college completion rates[19] and educational attainment.[20]

In fact, a recently released report on AAPI access to higher education in California, which is home to the nation's largest AAPI community, revealed a 43% disparity in University of California admit rates among various AAPI subgroups.[21] In particular, the admit rates of Filipino, Thai, Native Hawaiian and Pacific Islander, and Laotian students are all significantly lower than the general admit rate.[22] Moreover, relative to their overall population, Filipinos, Native Hawaiians, Samoans, Guamanians/Chamorros, and Fijians are underrepresented within the UC system.[23] This intraracial disparity in educational access and attainment is also evident in the AAPI community in Texas. *See* AALDEF Br. at Part II.B.1.b.

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[19] *Id.* at 16 (only 42% Guamanian/Chamorro, 40% Cambodian, 37% Laotian, 35% Native Hawaiian, and 29% Samoan students complete college within six years).

[20] *Id.* at 11 (only 29% Vietnamese, 24% Native Hawaiian, 13% Hmong, 12% Guamanian/Chamorro and Samoan, and 10% Laotian adults 25 years or older have a Bachelor's degree or higher).

[21] *Id.* at 21 (82% of Taiwanese applicants are admitted compared to 39% of Other Pacific Islanders).

[22] *Id.*

[23] *Id.* at 13 (Filipinos comprise 24.6% of California's AAPI population, but only 13.4% of AAPI UC freshmen).

C. All AAPI students benefit from the positive effects of race-conscious admissions on campus racial climate.

Like other students of color, AAPI students, regardless of whether they are overrepresented or underrepresented on college campuses, benefit from the increased racial diversity and improved racial climate produced by race-conscious policies.[24] A recent empirical study reported that AAPI students experienced direct racial hostility in the forms of racial bullying, racial slurs, and racial profiling,[25] as well as indirect intimidation as a result of witnessing racist acts directed towards other students of color.[26] Studies show that colleges and universities that reach the highest levels of diversity have fewer incidents of racial hostility.[27] AAPI students also reported feeling pressure to segregate and/or assimilate to the dominant

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[24] For a fuller discussion of the unique benefits that AAPI students obtain from diverse learning environments, see Brief of *Amici Curiae* Members of Asian American Center for Advancing Justice et al., in Support of Respondents at 15, *Fisher v. Univ. of Tex. at Austin*, No. 11-345 (Oct. 19, 2011), *available at* http://www.utexas.edu/vp/irla/Documents/ACR%20Asian%20American%20Center%20for%20Advancing%20Ju.pdf.

[25] Samuel D. Museus & Julie J. Park, *The Continuing Significance of Racism in the Lives of Asian American College Students*, J. College Student Dev., Vol. 56, No. 6, Sept. 2015, at 551, 553.

[26] *See id.* at 557-58.

[27] *See, e.g.*, Rebecca L. Stotzer & Emily Hossellman, *Hate Crimes on Campus: Racial/Ethnic Diversity and Campus Safety*, 27 J. Interpersonal Violence 644 (2012); *see also infra* note 28.

White culture, felt silenced in academic exchanges and campus spaces, and suffered from stereotyping as perpetual foreigners and/or model minorities. Race-conscious admissions policies designed to increase campus diversity can reduce some of the negative experiences that AAPI and other students of color encounter, and improve the educational experiences of all minority students.[28]

II. BECAUSE UT AUSTIN'S HOLISTIC REVIEW IS DESIGNED TO FOSTER A COMPREHENSIVE EVALUATION OF APPLICANTS, RACE IS RELEVANT CONTEXT AND SHOULD NOT BE THE ONE CONTEXTUAL FACTOR THAT IS WILLFULLY IGNORED.

Race-conscious policies, like UT Austin's holistic review, are designed to increase diversity on campus by comprehensively evaluating applicants and do not

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[28] *See, e.g.*, Julie J. Park, *Asian Americans and the Benefits of Campus Diversity: What the Research Says*, Nat'l Comm'n on Asian Am. & Pac. Islander Research in Educ. (2015), *available at* http://care.gseis.ucla.edu/wp-content/uploads/2015/08/CARE-asian_am_diversity_D4.pdf (showing that AAPIs view other racial groups more favorably, and vice versa, in a racially diverse student body); Shaun R. Harper & Sylvia Hurtado, *Nine Themes in Campus Racial Climates and Implications for Institutional Transformation* 12-14 (2007), *available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1017&context=sharper (collecting studies that describe the "isolation, alienation, and stereotyping with which [students of color] are often forced to contend on campuses where they are not the majority").

consider race mechanically or only for certain groups. *Fisher v. Univ. of Tex. at Austin*, 758 F.3d 633, 638 (5th Cir. 2014) ("*Fisher II*") ("race is a factor considered in the unique context of each applicant's entire experience" and is not assigned a numerical value). "[L]ike so many educational institutions across the Nation," UT Austin's admissions program was modeled on others that this Court had previously approved. *Fisher I*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting); *see also Fisher II*, 758 F.3d at 646 ("*Grutter* blessed an admissions program . . . which 'considers race as one factor among many'"), 653 (noting that UT Austin's program is "nearly indistinguishable from the University of Michigan Law School's program in *Grutter*" and allows "UT Austin to reach a pool of minority and non-minority students with records of personal achievement, higher average test scores, or other unique skills").

These sanctioned programs considered race as one of many factors that may shed light on applicants' past achievements and future potential. Were this Court to change course and rule that UT Austin's holistic review was unconstitutional, it would signal that even limited and individualized consideration of race is impermissible. The undersigned *Amici* oppose this attempt to handicap universities like UT Austin, who properly balance the need for racial diversity with a commitment to individualized review. *First*, banning the consideration of race turns a blind eye to the reality of race and racism in this country. *Second*, banning the consideration of race cannot be mitigated

by the consideration of other factors, which are imperfect proxies for race. *Third*, banning the consideration of race would put undue emphasis on test scores, which are *not* race-neutral or a good indication of merit.

A. Race and racial barriers remain factors in American life, and should not be ignored in evaluating the relative merits of different applications.

"The enduring hope is that race should not matter; the reality is that too often it does." *Parents Involved*, 551 U.S. at 787 (Kennedy, J., concurring in part). The undersigned *Amici* oppose efforts to deny this reality and to pretend that race is an irrelevant consideration, for AAPIs or other racial groups.[29]

UT Austin's holistic review properly considers contextual factors in evaluating past achievements

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[29] More than 80% of AAPI college students *disagreed* with the statement that racial discrimination is no longer a problem in America. *See* Mitchell J. Chang et al., *Beyond Myths: The Growth and Diversity of Asian American College Freshmen: 1971-2005*, Higher Educ. Research Inst., UCLA (2007), *available at* http://www.heri.ucla.edu/PDFs/pubs/TFS/Special/Monographs/BeyondMyths-AsianTrends.pdf. Moreover, a recent study found that perceptions of racism affect Asian American college students' career choices, which demonstrates that racism continues to shape the lives of AAPI students in tangible ways. *See* OiYan Poon, *"The Land of Opportunity Doesn't Apply to Everyone": The Immigrant Experience, Race, and Asian American Career Choices*, J. College Student Dev., Vol. 55, No. 6, Sept. 2014, at 511.

and future potential, including whether applicants may have faced and overcome certain disadvantages. *See Fisher II*, 758 F.3d at 638 (considering "socioeconomic status, family composition, special family responsibilities"); *Fisher I*, 133 S. Ct. at 2415-16 (acknowledging special circumstances such as "growing up in a single-parent home, speaking a language other than English at home, significant family responsibilities assumed by the applicant, and the general socioeconomic condition of the student's family"). For example, "many would consider a student's achievement in becoming her school's best fiction writer to be more impressive if that student were a nonnative English speaker. Similarly, a student's significant achievements in being elected and serving as a strong leader in many activities at her school would be even more impressive if that student grew up in a poor single-mother household that required her to work twenty hours per [week] in addition to her academics than if that student grew up in a wealthy household and did not encounter such burdens."[30]

Few would suggest that universities must disregard such relevant context in evaluating applicants, and this Court has rejected the proposition that schools must ignore race as one possible source of

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[30] Mario L. Barnes et al., *Judging Opportunity Lost: Assessing the Viability of Race-Based Affirmative Action After* Fisher v. University of Texas, 62 UCLA L. Rev. 272, 291-92 (2015).

disadvantage. *See Parents Involved*, 551 U.S. at 788 (Kennedy, J., concurring in part) ("In the real world, it is regrettable to say, [color-blindness] cannot be a universal constitutional principle."). "[T]he inclusion of racial details gives a fuller picture of the student's background . . . and thus their merits for admission. Race and an individual's background cannot be separated – trying to separate them undercuts the significance of the different applicants' achievements by failing to take into account the race-related obstacles that they overcame."[31]

This Court should not force universities to ignore relevant (and in some cases, important) information while trying to make fully informed decisions about applicants. To be clear, this kind of forced blindness is *not* race-neutral, because it favors racial groups who have suffered less racial discrimination. Universities would "end[ ] up conferring a preference for applicants for whom race does not matter, or more accurately, for those who do *not* suffer the traditional harms stemming from structural racism."[32] The failure "to acknowledge the real meaning of race, racism, and their consequences in the United States" would exacerbate "a racial preference in favor of Whites in the admissions process."[33] This is precisely what happened in Texas, where the lack of consideration

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[31] *Id.* at 292-93.

[32] *Id.* at 294-95 (quotation marks omitted, emphasis added).

[33] *Id.* at 290.

of race before 2005 resulted in holistic admissions at UT Austin that approached an "all-white enterprise." *Fisher II*, 758 F.3d at 647.

This kind of purportedly "color-blind" system would not benefit AAPIs, who share a history of discrimination with other minority groups and continue to face race-based hurdles that serve as important context for their accomplishments. *See supra* Part I.A. For example, if certain "plus factors" tend to benefit White applicants (*e.g.*, recommendations from well-connected references, certain athletics like lacrosse), but universities must ignore race, universities may systematically give advantages to majority applicants over minority applicants. And if AAPIs demonstrate excellence in areas where they are traditionally underrepresented (*e.g.*, military service, certain athletics such as basketball/football/baseball), universities who are forced to ignore race will lose opportunities to give additional consideration to AAPIs who contribute additional diversity in those arenas.

In addition to handicapping universities, a ban on the consideration of race may force applicants themselves to omit critical information about their background and achievements. "[T]o assume that race has no meaning or consequence in people's lives and thus should not be part of their applications unfairly assumes that one can speak about herself and her life in a coherent fashion without regard to race. . . . [T]he life story of many people – particularly

with regard to describing disadvantage – simply does not make sense without reference to race."[34]

B. Universities should not be forced to use proxies for race, which address distinct interests.

To mitigate the harmful effects from banning the consideration of race, Petitioner offers nonracial alternatives as ways of improving diversity and mitigating systemic disadvantages among applicants. *See* Pet. Br. at 23-24, 42, 47. This, however, assumes that nonracial factors are an adequate proxy for the consideration of race. Unlike Petitioner and her *amici*, the undersigned *Amici* refuse to deny the unique and continuing negative effects of systemic racism in this country. Nonracial considerations, even if laudable, are not designed to ameliorate *racial* barriers in the educational pipeline and are inadequate substitutes for the consideration of race.

For example, percentage plans like UT Austin's cannot guarantee meaningful diversity in higher education. The efficacy of the Top 10% Plan in increasing diversity depends entirely on *racial* segregation in Texas high schools. *See Fisher I*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting) ("Texas' percentage plan was adopted with racially segregated neighborhoods and schools front and center stage. . . . It is

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[34] *Id.* at 290 (internal quotation marks and footnotes omitted).

race consciousness, not blindness to race, that drives such plans."); *Fisher II*, 758 F.3d at 650-51. "[O]nly an ostrich could regard the supposedly neutral alternatives as race unconscious." *Fisher I*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting). This fundamental flaw was evident at UT Austin, which concluded that its Top 10% Plan increased certain minority numbers somewhat but did not result in meaningful diversity. *Fisher II*, 758 F.3d at 649.

Nor is socioeconomic status an equivalent proxy for race. "[A]lthough improving access for low-income students at America's top universities is a worthy policy goal, it is conceptually distinct."[35] "[N]umerous empirical studies – conducted both before and after the [*Gratz*] and *Grutter* cases – [] corroborate the basic finding that class-based affirmative action programs cannot substitute for race-conscious policies at highly selective American colleges and universities."[36]

States that have attempted to use nonracial proxies (such as socioeconomic status) in lieu of race to increase racial diversity have found that such proxies fail to wholly eliminate the educational barriers facing many minority groups. *See, e.g.*, *Fisher II*, 758 F.3d at 649 (noting that minority admissions fell after *Hopwood*'s ban on the consideration of race in Texas, even though "this record shows

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[35] William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the* Fisher *Case*, 39 J.C. & U.L. 53, 117 (2013).

[36] *Id.* (citing studies).

that UT Austin implemented every race-neutral effort that its detractors now insist must be exhausted prior to adopting a race-conscious admissions program"). In California, for example, Proposition 209 banned the consideration of race in university admissions, forcing the University of California system to use nonracial proxy programs to increase diversity (such as targeted enrollments based on income) but with limited effect. "[A]s the plunge in underrepresented minority enrollments . . . tells us, UC's comparatively optimal conditions for enrolling low-income students are not nearly enough to offset the race-specific barriers associated with Prop 209."[37] Given that such diligent exploration of nonracial alternatives has yet to overcome the unique and persistent effects of race, universities should not be forced to simply accept and turn a blind eye to systemic racism. And this Court has explained that narrow tailoring "does not require exhaustion of every conceivable race-neutral alternative," no matter how untenable. *Grutter*, 539 U.S. at 309.

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[37] *Id.* Further, the increased focus on purportedly "race-neutral" factors such as test scores and grades did little to improve the ability to predict later success. *Id.* at 95 ("Even when high school grades and SAT scores are combined, this only explains 26-27% of the variance in freshmen GPA at UC for the entering classes of 2003 and 2004.").

C. Nor should universities rely solely on test scores, which are not race-neutral and not a good predictor of college success.

In their laudable efforts to ferret out systemic disadvantage among college applicants, universities have begun to scrutinize standardized tests like the SAT as a potential contributor to the problem.[38] For this reason, the undersigned *Amici* question the myopic focus on test scores as the *sine qua non* of merit. Indeed, a recent study shows SAT scores can be increasingly predicted by factors known at students' birth, such as family income, parental education, and race or ethnicity. Race and ethnicity are increasing in salience and are now the *single strongest predictor* of SAT scores.[39] Therefore, where SAT

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[38] A growing movement in higher education is to make standardized tests optional to increase diversity and improve access for underrepresented students. *See, e.g.*, Valerie Strauss, *A List of 180+ Ranked Schools that Don't Require ACT or SAT Scores for Admissions*, Wash. Post, July 27, 2015, https://www.washingtonpost.com/news/answer-sheet/wp/2015/07/27/a-list-of-180-ranked-schools-that-dont-require-act-or-sat-scores-for-admissions. And a recent study showed no significant differences in cumulative GPA or graduation rates between those who submit SAT or ACT scores and those who do not. William C. Hiss & Valerie W. Franks, *Defining Promise: Optional Standardized Testing Policies in American College and University Admissions* 3 (2014), *available at* http://www.nacacnet.org/research/research-data/nacac-research/Documents/DefiningPromise.pdf.

[39] *See* Saul Geiser, *The Growing Correlation Between Race and SAT Scores: New Findings from California*, Ctr. for Studies in Higher Educ., UC Berkeley (2015), *available at* http://

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scores receive significant emphasis in the admissions process, such as in UT Austin's holistic review,[40] it is important that the SAT scores be situated in the proper context, which must include race because of the substantial adverse impact of test scores for students of color.

Standardized tests like the SAT are not designed to measure innate "mental capacity nor mastery of a specified curriculum."[41] Further, SAT scores provide at best an incomplete measure of academic achievement and potential. It is therefore appropriate for UT Austin to utilize a variety of other admissions criteria, of which race is only one of many, in addition to SAT scores. Studies show that scores on the SAT have low predictive powers beyond first-year college grades.[42] Some studies have found that SAT test

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www.cshe.berkeley.edu/sites/default/files/shared/publications/docs/ROPS.CSHE_.10.15.Geiser.RaceSAT.10.26.2015.pdf.

[40] Regardless of race, students admitted through UT Austin's holistic review since 2003 have tended to have even higher SAT scores than those granted automatic admission under the Top 10% Plan. *See* Supplemental Joint Appendix ("SJA") at 47a, 49a.

[41] *Reports Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 Mich. J. Race & L. 243, 253 (1999) (citing Expert Report of Claude M. Steele, *Grutter v. Bollinger*, 137 F.Supp.2d 821 (E.D. Mich. 2001)).

[42] *See* Sigal Alon & Marta Tienda, *Diversity, Opportunity and the Shifting Meritocracy in Higher Education*, 72 Am. Soc. Rev. 487, 506 (2007); Marta Tienda & Sunny Xinchun Niu, *Flagships, Feeders, and the Texas Top 10% Law: A Test of the "Brain Drain" Hypothesis*, 77 J. Higher Educ. 712, 732 (2006).

scores' predictive value is limited even for first-year college grades. One study concluded that SAT scores explain less than 3% of the variance in first-year grades, once students' social backgrounds are taken into account.[43] Were test scores an accurate measure of merit, they would correspond with other measures of achievement. However, the correlation between SAT test scores and high-school grades, both at UT and nationwide, is low.[44] Students with high test scores but low class rank tend to underperform.[45]

Because test scores can be increased significantly by participation in expensive test-preparation courses,[46] they are socioeconomically skewed in favor of

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[43] Jessie M. Rothstein, *College Performance Predictions and the SAT*, 121 J. Econometrics 297 (2004); *see also* Tienda, *supra* note 42; Alon, *supra* note 42.

[44] *See* Mark C. Long & Marta Tienda, *Changes in Texas Universities' Applicant Pools After the* Hopwood *Decision*, 39 Soc. Sci. Research 48, 55 Fig. 1 (2010); Alon, *supra* note 42, at 490, 497 Table 3.

[45] Alon, *supra* note 42. In fact, the impact of a one-standard-deviation change in high school GPA on the probability of college degree attainment and college GPA was 1.5 to 3 times as large as a one-standard-deviation change in test scores. *See* William T. Dickens & Thomas J. Kane, *Racial Test Score Differences as Evidence of Reverse Discrimination: Less than Meets the Eye*, 38 Indus. Rel. 331, 340 n.11 (1999).

[46] Jay Rosner, *Disparate Outcomes by Design: University Admissions Tests*, 12 Berkeley La Raza L.J. 377, 383-84 (2001). "Students who have more highly educated parents, have more financial resources, attend schools with higher participation in AP courses, and who have parents who have high educational aspirations for them are not only more likely to participate in

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wealthier students who have access to test preparation courses.[47] Social science research demonstrates that enduring gaps in scores on standardized tests, such as the SAT, reflect a combination of complex structural factors that break down along racial (and sometimes ethnic) lines, a fact that is even more apparent in the limited number of studies of standardized test performance providing disaggregated data within the AAPI community.[48] African American, Latino, Native American, and certain AAPI ethnic groups are overrepresented among low-income students, and are

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the more elite forms of test prep, they achieve higher scores on the SAT (combined 42 points)." Julie J. Park & Ann H. Becks, *Who Benefits from SAT Prep?: An Examination of High School Context and Race/Ethnicity*, 39 Rev. Higher Ed. 1, 20 (Fall 2015). Further, East Asian American students were most likely to take commercial test preparation courses and benefitted most from this particular form of SAT coaching. *See id.*; Soo-yong Byun & Hyunjoon Park, *The Academic Success of East Asian American Youth: The Role of Shadow Education*, 20 Soc. of Ed. 1 (2011).

[47] *See id.*; Alon, *supra* note 42, at 490-91; *see also* The Princeton Review, *SAT Test Preparation* (2012), *available at* http://www.princetonreview.com/college/sat-test-preparation.aspx (charging from $1,000 to $2,000 for an intensive SAT preparation course).

[48] *See, e.g.*, Valerie Ooka Pang et al., *Asian American and Pacific Islander Students: Equity and the Achievement Gap*, 40 Educ. Researcher 378, 382 Table 2 (2011) (seventh graders from the following AAPI subgroups scored lower than White students in *both* reading and math on California's CAT-6 test: Lao, Cambodian, Native Hawaiian, Guamanian, Samoan, Other Pacific Islander, and Filipino).

significantly more likely to attend resource-poor schools and be less likely to hold a high-school diploma or graduate from college.[49] They are also more likely to be unfairly assigned to lower academic tracks throughout their elementary and high-school years, to be taught by less-skilled or less-experienced teachers, and to attend schools in distressed neighborhoods or in suburban areas where they are socially isolated, all factors which contribute to poor test-readiness and lower performance on standardized tests.[50] In addition, studies have consistently demonstrated that the standardized test performance of highly motivated and qualified minority students is artificially depressed because of test-taking pressures related to internalized fears about stereotypes that they are less intellectually capable, an influence known as "stereotype threat."[51]

Such structural and sociological barriers, while they may result in differences in mean test scores between racial groups, do not reflect differences in

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[49] *See* Barbara Schneider et al., *Barriers to Educational Opportunities for Hispanics in the United States*, in *Hispanics and the Future of America* 179 (Marta Tienda & Faith Mitchell eds., 2006); Robert T. Teranishi, *Asians in the Ivory Tower: Dilemmas of Racial Inequality in American Higher Education* 82-83 (2010).

[50] *See Reports Submitted on Behalf of Univ. of Mich.*, *supra* note 41, at 247-48.

[51] For a general discussion of "stereotype threat," see Claude M. Steele, *Whistling Vivaldi: And Other Clues How Stereotypes Affect Us* (2010), and AALDEF Br. at Part I.B.2.

innate abilities or intelligence between racial groups.[52] Yet those artificial differences are perpetuated over time, because "test-norming" procedures are designed to produce the *same* statistical outcomes as prior results.[53] Therefore, consideration of criteria in addition to SAT scores is necessary in an admissions process to ensure a "fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 306 n.43 (1978) (Powell, J.).

III. THE FLEXIBILITY OF UT AUSTIN'S INDIVIDUALIZED REVIEW BENEFITS, AND DOES NOT EXCLUDE OR HARM, ASIAN AMERICANS AND PACIFIC ISLANDERS.

Even though AAPIs have benefitted from affirmative action programs, Petitioner and her *amici* are

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[52] *See, e.g.*, William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 Cal. L. Rev. 1055, 1076-79 (2001); Nellie Tran & Dina Birman, *Questioning the Model Minority: Studies of Asian American Academic Performance*, 1 Asian Am. J. Psychol. 106, 109 (2010).

[53] *See* Maria Veronica Santelices & Mark Wilson, *Unfair Treatment?: The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 Harv. Educ. Rev. 106 (2010); Martin Shapiro, *A Psychometric Model for Preserving Discrimination*, 12 Berkeley La Raza L.J. 387 (2001) (Expert Report, *Grutter v. Bollinger*, 137 F.Supp.2d 821 (E.D. Mich. 2001)).

opposed to all such programs. But this ideological opposition is not based on actual facts or evidence about specific programs. For example, Petitioner incorrectly asserts that AAPIs are "excluded from . . . racial preference" at UT Austin. Pet. Br. at 27.[54] This claim is intended to invoke a commonly held misperception that universities use dispositive "racial preferences" that automatically guarantee certain races – but not AAPIs – admission. The undersigned *Amici* would oppose such automatic guarantees or unconstitutional quotas *if proven by evidence*. However, unlike those who categorically oppose any race-conscious programs regardless of the facts, the undersigned *Amici* believe that admissions programs must be judged individually based on the actual evidence. Here, there is no support for the claim that AAPIs are "excluded" from benefitting from race-conscious holistic review.

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[54] To support this claim, Petitioner cites to Appendix F of the Petitioner's Appendix ("Pet. App."), which corresponds to the district court's opinion dated August 17, 2009. *See* Pet. Br. at 27 (citing "App. 301a"). The cited page simply explains that "compared to their percentage of Texas' population as a whole, Hispanics remain underrepresented. Asian-Americans, on the other hand, are largely *overrepresented* compared to their percentage of Texas' population." Pet. App. at 301a. This was a general demographic observation by the district court, not a policy statement by UT Austin that individuals from any group are "excluded" from holistic review. The fact that UT Austin did not consider AAPIs *as a group* to be underrepresented does not mean that it precluded *individual* AAPI applicants from benefitting from the consideration of race. *See infra* Part II.A.

A. UT Austin's holistic review provides necessary flexibility to attain meaningful racial diversity, including within the AAPI community.

At the outset, it is important to correct any misperception that UT Austin's consideration of race somehow trumps all other factors, such as test scores, to the detriment of AAPI applicants. Race is considered only as "a factor of a factor" in UT Austin's holistic review. *Fisher II*, 758 F.3d at 659. Indeed, contrary to the assertions of Petitioner's *amici*, UT Austin places greater weight on academic factors such as "test scores, class rank, and high school coursework," as well as other personal achievement factors such as "demonstrated leadership qualities, extracurricular activities, honors and awards, essays, work experience, [and] community service." *Id.* at 638. Under this system, high test scores are more likely than any racial "plus factor" to benefit applicants who did not graduate near the top of a competitive class.

However, because test scores are not race-neutral and may disadvantage many minority students, *see supra* Part II.C, UT Austin expressly allows for any individual, *including AAPIs*, to have their race considered as a plus factor in the holistic admissions process.[55] Under UT Austin's holistic review, even

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[55] The consideration of race is *necessary* to balance the disproportionate impact of biased test scores in the holistic admissions process. *See* Geiser, *supra* note 39, at 21 ("[i]f the

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individual applicants who are members of groups that are not generally underrepresented can benefit from the consideration of race. *See* Joint Appendix ("JA") at 334a (noting that the consideration of race can apply to AAPIs as well), 335a (explaining, for example, that a White senior class president of a predominantly African American high school would benefit from racial consideration). And there is no evidence in the record that UT Austin applied anything approaching a "cap" on AAPIs, through the holistic review process or elsewhere. *See* AALDEF Br. at Part I.A.

For example, AAPI applicants who demonstrate cross-cultural competencies (like the White senior president at a predominantly black high school) or the potential to increase intraracial diversity (*e.g.*, an AAPI football star) can have their race considered as a "plus factor" in holistic review. This flexibility is critical to ensure that a meaningful range of individuals within any given race are considered and that universities do not reinforce existing stereotypes about minorities, including AAPIs.[56]

SAT is an educational necessity, then so is explicit consideration of race"). In the case of UT Austin, "there was a cautious, creeping numerical increase in minority representation following the inclusion of race and ethnicity in the holistic review program." *Fisher II*, 758 F.3d at 655.

[56] *See Grutter*, 539 U.S. at 319-20 (recognizing that meaningful critical mass shows that "there is no 'minority viewpoint' but rather a variety of viewpoints among minority students"); Devon Carbado, *Intraracial Diversity*, 60 UCLA L. Rev. 1130,

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Indeed, the record indicates that UT Austin's holistic review benefitted many AAPI individuals *with low test scores*. Even after race was added as a subfactor in holistic review in 2005, a number of AAPIs with low SAT scores were admitted through the race-conscious process. *See* SJA at 164a. Data show that at least[57] 53 AAPIs in 2005, 49 in 2006, and 67 in 2007 were admitted through UT Austin's holistic review, despite having SAT scores well below the mean for UT Austin enrollees those years. *Id.* The highest number during this five-year period was 2007 when race *was* considered, even higher than in 2003 and 2004 when race was *not* considered. *Id.* This undercuts any suggestion that AAPI applicants are (1) "excluded" from benefitting from UT Austin's holistic review, or (2) categorically "burdened" by being required to achieve substantially higher SAT scores than their non-AAPI peers.

1163-64 (2013) (explaining that intraracial diversity helps counter negative racial stereotypes such as "Asian Americans are quiet").

[57] Data taken from Table 6c showing disaggregated SAT scores for AAPI students admitted and enrolled through the Top 10% Plan and holistic review. *See* SJA at 164a. Because this table shows SAT scores of AAPI admits who actually *enrolled* as freshmen, it does not include AAPI students who were admitted but did not enroll, and who may also have had below-average SAT scores.

B. There is no evidence that AAPIs are systematically disadvantaged by UT Austin's application of holistic review.

Leaving aside the record evidence that individual AAPIs can and did benefit from holistic review, Petitioner and her *amici* ignore other inconvenient truths about UT Austin's treatment of AAPIs as a whole: even after the inclusion of race in 2005, (1) there was no drop in AAPI overall admissions; (2) there was no drop in AAPI holistic admissions; and (3) there was no increase in the "test score gap" between mean AAPI SAT scores and those of other groups. One would expect to see each of these trends if, as Petitioner's *amici* suggest, UT Austin used race-conscious holistic admissions in 2005 as a pretext to "burden" AAPIs by forcing them to obtain higher test scores than other groups. *See* AALF Br. at 9.

First, there is no evidence of a decrease in the number of AAPI total admits after the inclusion of race in UT Austin's holistic review in 2005. *See* SJA at 156a. No overall shortfall exists between AAPI *applications* on the one hand, and *admissions* or *enrollment* on the other hand, that would support a claim of discrimination against AAPIs. *See* SJA at 43a, 156a. Between 1996 and 2008, AAPI students consistently comprised 14-15% of all freshman applicants at UT Austin. *See id.* AAPI students comprised 14-18% of all freshmen admits, with the highest percentages in that range occurring *after* UT Austin began considering race in 2005 and allegedly began penalizing AAPIs. *Id.* During that same period, AAPI

students comprised 15-20% of all enrolled freshmen. *Id.* Because admission and enrollment of AAPIs did not drop after the introduction of UT Austin's race-conscious admissions program in 2005, there is no support for the claim that race-conscious admissions disproportionately "burdened" AAPIs.[58] *See* AALF Br. at 9.

Second, there was no dip in the number of AAPI holistic admits attributable to the inclusion of race in 2005. *See* SJA at 157a. UT Austin's holistic review admitted and enrolled comparable percentages of AAPIs before *and* after the inclusion of race in 2005.[59] *See id.* In fact, the percentage of enrolled students

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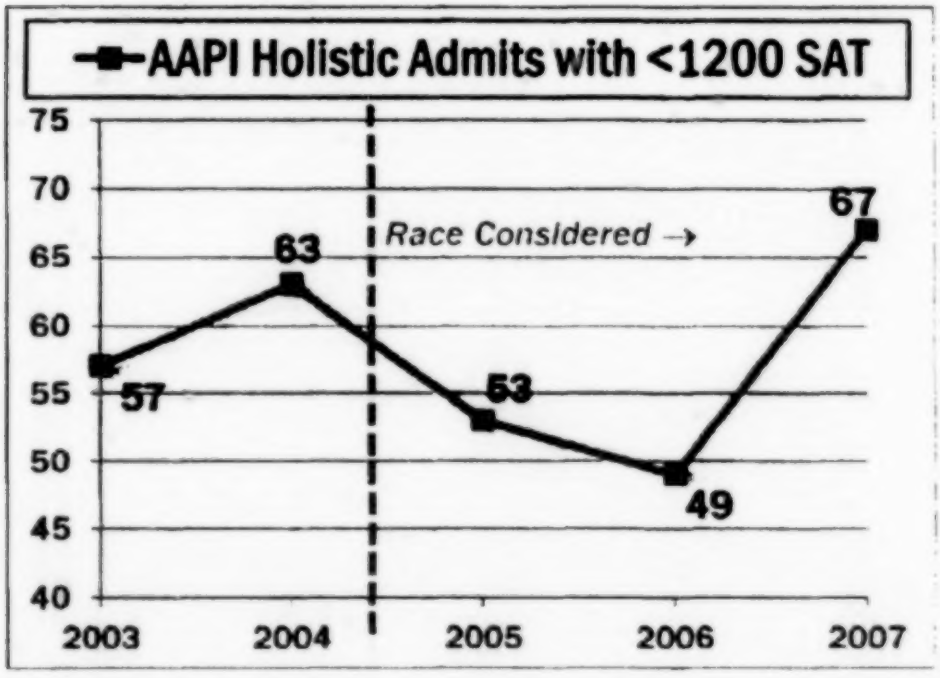
[58] Indeed, the Fifth Circuit explained that White students, and not minority students, benefitted disproportionately from UT Austin's holistic review. *See Fisher II*, 758 F.3d at 657 ("The data also show that White students are awarded the overwhelming majority of the highly competitive holistic review seats.").

[59] In the year with the lowest percentage of AAPI holistic admits (14% in 2008), the resulting decrease was more likely the result of more holistic admissions going to *White applicants* than to Hispanic or African American applicants. *See* SJA at 157a (White enrollment through holistic admission increased from 55% in 2007 to 65% in 2008, while African American, AAPI, and Hispanic enrollment *all* showed marked decreases). Petitioner applied with the 2008 cohort but did not get accepted, even though White students comprised a much larger percentage of holistic admits that year. The simple, *nonracial* reason is that Petitioner's subpar academic record was not a golden ticket to admission for anyone: 168 African Americans and Latinos with AI/PAI scores *equal to or higher* than Petitioner's were also denied admission. *See* Barnes, *supra* note 30, at 299.

admitted through the holistic process after 2005 who are AAPI exceeds those who are Hispanic. *See id.* (18% of holistic enrollees in 2005 were AAPI compared to 13% who were Hispanic). This is true even though the number of Hispanic total admits started to exceed the number of AAPI total admits in 2005. *See* SJA at 156a.

And contrary to the claim that holistic review imposes higher SAT thresholds on AAPIs, the number of AAPI holistic admits *with below-average SAT scores* did not plummet after the inclusion of race in 2005:

[60]



[60] Data compiled from the number of AAPIs with SAT scores below 1200, which was below the mean SAT scores for all students admitted either through the Top 10% Plan or through race-conscious holistic review. *See* SJA at 164a, Table 6c.

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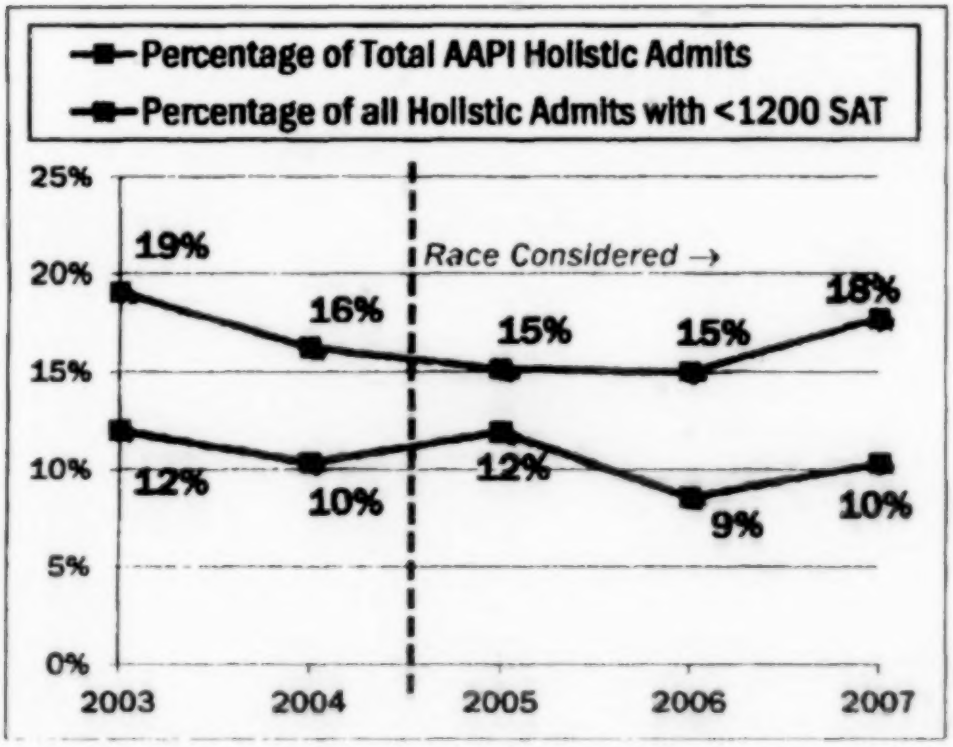

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[61] The top line reflects AAPI holistic admits with below-average SAT scores as percentage of all AAPI students admitted and enrolled through holistic review in 2003-2007. *See* SJA at 164a, Table 6c. For example, in 2003, there were 299 AAPI students admitted and enrolled through the Non-Top 10% process. *Id.* Fifty-seven of the 299, or approximately 19%, had SAT scores below 1200, which was significantly below that year's mean of 1257 for all holistic admits. *Id.*

The bottom line reflects AAPI holistic admits with below-average SAT scores as a percentage of *all* students admitted and enrolled through holistic review despite below-average SAT scores from 2003-2007. *See* SJA at 162a. For example, 1804 total students entered UT Austin in 2003 through the Non-Top 10% process. *Id.* 475 of those students had SAT scores below 1200, which was significantly below that year's mean of 1257 for all holistic admits. *Id.* (30 + 43 +128 + 274).

Whether measured as a percentage of all AAPI holistic admits, or as a percentage of all holistic admits with below-average SAT scores, the fact is that AAPIs (including those with below-average SAT scores) were not suddenly winnowed out with the inclusion of race in 2005.

Third, Petitioner's *amici* point to the "test score gap" between *mean* AAPI SAT scores and those of other groups as evidence of discriminatory intent. Conceptually, mean SAT scores by race do not reveal how individual applicants are treated. Practically, the record demonstrates that any "test score gap" existed well *before* UT Austin began considering race in 2005. *See* SJA at 49a-53a (showing differential test score averages between races from 1996 through 2005). This gap also existed in Top 10% admissions, which does *not* consider race as a factor in admission decisions. *Id.*[62] This conclusively demonstrates that any "test score gap" was not *caused* or *increased* by holistic review.

UT Austin's track record is consistent with nationwide data, which indicates that AAPI *applicants* as a group generally have higher average SAT

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[62] *See also* Kidder, *supra* note 35, at 94 ("the SAT score differences among those admitted to UT Austin through the formally race-neutral Ten Percent Plan are similarly large as the gaps among those admitted outside the Ten Percent Plan"); AALDEF Br. at Part I.B.2.

scores than applicants from other racial groups.[63] Any "test score gap" begins with the starting applicant pool, before any admissions decision is made. While the structural forces contributing to differences in the applicant pool are complex, *see supra* Section II.C, it cannot be said that the root cause of any disparities lies in any subsequent admissions process.[64] Where *none* of the aforementioned data support Petitioner and her *amici*'s claims that holistic admissions disproportionately hurts AAPIs, those claims must be rejected.

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[63] *See* The College Board, *2008 College-Bound Seniors State Profile Report – Texas*, Table 9 (2008), *available at* http://professionals.collegeboard.com/profdownload/Texas_CBS_08.pdf.

[64] *See* Claude S. Fischer et al., *Inequality by Design: Cracking the Bell Curve Myth* 46 (1996) ("Race-neutral selection processes pass disparities in the applicant pool through to the freshman class. . . . [T]he fact that the average test score among freshmen of Asian American descent is higher than that among white [or Latino or African American] students does not prove that universities are discriminating against Asian Americans."); Kidder, *supra* note 35, at 97-98 ("The strong consensus among scholars from a range of disciplines is that racial/ethnic average differences in SAT test scores at selective institutions, such as UT Austin, are to be expected for reasons that are fundamental to selective higher education admissions and that function independent of affirmative action.").

C. The majority of AAPIs support affirmative action in various sectors of public life, including higher education.

Given this lack of evidence showing that AAPIs are specifically harmed by race-conscious admissions, and the ample evidence showing ways that AAPIs benefit directly and indirectly from it, it is not surprising that the majority of AAPIs have consistently supported affirmative action for the past twenty years.[65] In 1996, 61% of AAPIs rejected Proposition 209, which banned affirmative action programs in California. A national survey of AAPIs in 2001 show that 63.1% of AAPIs believe that affirmative action "is a good thing" as opposed to 5.7% who reported that it is a "bad thing."[66] A 2004 survey of AAPI college students attending 169 colleges and universities revealed that 62.6% of AAPI college students disagreed with the notion that affirmative action should be eliminated.[67] In 2006, 75% of AAPIs rejected Proposal 2, which banned affirmative action programs

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[65] Robert T. Teranishi, *The Attitudes of Asian Americans Toward Affirmative Action*, Nat'l Comm'n on Asian Am. & Pac. Islander Research in Educ. (2015), *available at* http://care.gseis.ucla.edu/wp-content/uploads/2015/08/CARE-affirmative_action_polling-1v2.pdf.

[66] Pei-te Lien, *Pilot National Asian American Political Survey, 2000-2001*, Inter-University Consortium for Political and Social Research (2004), *available at* http://www.icpsr.umich.edu/icpsrweb/RCMD/studies/3832.

[67] Julie J. Park, *Taking Race into Account: Charting Student Attitudes Towards Affirmative Action*, 50 Res. in Higher Educ. 670, 686 (2009).

in Michigan.[68] In national surveys conducted in 2012 and 2014, AAPIs indicated overwhelming support for affirmative action, by 78% and 70%, respectively.[69] In the most recent survey conducted last year, strong support for affirmative action continues today, even when controlling for national origin, gender, age, and nativity.[70]

CONCLUSION

Amici submitting this brief have a long history of representing the interests of a wide swath of the AAPI community over many years. That breadth of experience leads to the inescapable conclusion that, despite the progress made by some Asian Americans, there continue to be challenges to equal access and opportunity for all. For the foregoing reasons, this Court should renew its commitment to the thoughtful, individualized consideration of race in university

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[68] *Asian Americans for Affirmative Action*, The Nation (2007), *available at* http://www.thenation.com/article/asian-americans-affirmative-action.

[69] *See* Karthick Ramakrishnan & Taeku Lee, *The Policy Priorities and Issue Preferences of Asian Americans and Pacific Islanders* 16-17 (2012), *available at* http://www.naasurvey.com/resources/Home/NAAS12-sep25-issues.pdf; Karthick Ramakrishnan, *An Agenda for Justice: Contours of Public Opinion Among Asian Americans* 8-9 (2014), *available at* http://aapidata.com/wp-content/uploads/2014/11/APV-AAJC-issues-nov7.pdf.

[70] *Id.* at 9.

admissions to further open the doors to higher education and improve diversity, and *Amici* support an affirmance of the judgment of the Fifth Circuit in favor of Respondents.

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APPENDIX

LIST OF ADDITIONAL *AMICI CURIAE*

ORGANIZATIONAL AMICI

18 Million Rising was founded to promote AAPI civic engagement, influence, and movement by leveraging the power of technology and social media. Since 2012, our work includes year-round civic activity locally and nationally, holding corporations accountable, building interracial coalitions, and developing identities.

After Bruce is a PR and marketing firm committed to the advancement of AAPI and other underrepresented communities in the media landscape. We believe in the power of independent filmmakers, community-minded organizations, and socially-conscious businesses to elevate voices, influence audiences, and impact the most pressing issues we face.

Alliance of Filipinos for Immigrant Rights and Empowerment, founded in 2008, aims to build the capacity of the Filipino American community to effect constructive social change through grassroots education, action, research, and services. AFIRE advocates for social justice and community development via four key programs, Civic & Community Engagement, Health & Wellness, Human rights & Advocacy, and Migration, Immigration and Integration.

American Citizens for Justice, Inc./Asian American Center for Justice is devoted to civil rights

education and advocacy on behalf of Asian American communities and all people of color in Michigan. ACJ believes that race or ethnicity can be used as a factor in admissions that remediates historical discrimination, but condemns the use of race or ethnicity for any institution's negative action that disadvantages Asian Americans and Pacific Islanders.

American Educational Research Association: Research on the Education of Asian and Pacific Americans, Special Interest Group promotes inquiry into educational and equity issues affecting Asian and Pacific Americans, facilitates interdisciplinary discussions around these issues, and provides members with colleagueship and support.

Anakbayan Inland Empire is a youth and student organization working to educate, organize, and mobilize our community to address important issues that affect Filipinos in the United States and the Philippines, including access to education. We aim to unite Filipino youth of all backgrounds in order to achieve genuine freedom and democracy in the Philippines.

API Equality-LA is an LGBTQ rights and racial justice organization building grassroots community power and organizing for change in the API community. API Equality-LA supports policies that promote a diverse community.

API Equality-Northern California works to build LGBTQ API power through training and developing new leaders, establishing intergenerational connections, and documenting and disseminating our histories.

APIENC is committed to racial justice and solidarity with all people of color.

Arab American Action Network supports the Arab community in Chicago through community organizing, advocacy, social services, youth development, cultural outreach, and building alliances with other communities. Our slogan is *Meeting Community Needs, Building on Community Strengths.*

Asian American Bar Association of the Greater Bay Area is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in California. Since 1976, AABA and its attorneys have been actively involved in civil rights issues, including filing an *amicus* brief in the *Bakke* affirmative action case and a successful petition overturning the conviction of Fred Korematsu in *Korematsu v. United States*.

Asian American and Pacific Islander Research Coalition is interested in fighting systems of oppression and advocating for greater opportunities for underserved communities. We believe that affirmative action is necessary for us to collectively advance these goals.

Asian American Psychological Association is a national non-profit organization whose mission is to advance the mental health and well-being of Asian American communities through research, professional practice, education, and policy. For over forty years, AAPA has been at the forefront of the multicultural psychology movement and has advocated for social

justice, particularly for historically marginalized groups.

Asian Counseling and Referral Service provides culturally competent and linguistically accessible behavioral health, social services, and civic engagement activities for AAPI communities in Washington. ACRS promotes policies, such as affirmative action, which advance social justice and equitable opportunities for all.

Asian Immigrant Women Advocates was founded in 1983 to empower low-income and limited English-speaking Asian immigrant women and youth to be leaders in workplaces, schools, and broader society. Through education, leadership development, and collective action, immigrant women and youth are empowered to work together with other diverse communities to build a more just and inclusive society for all.

Asian and Latino Community Services, founded in 2006 in Arizona, is a non-profit organization dedicated to providing health and educational services to Asian and Latino community members. ALCS believes that Asian and Latino Americans need to fight poverty barriers, employment discrimination, educational inequality and other social injustice.

Asian Law Alliance, founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian/Pacific Islander and low income communities in Santa Clara County, California. ALA has provided

community education and legal services on affirmative action and discrimination issues for over 38 years.

Asian Pacific American Bar Association of Los Angeles County, formed in 1998, advocates on issues that impact the AAPI community and is committed to civil rights, racial justice, and equal opportunity. APABA-LA opposes initiatives designed to deprive immigrants, people of color, and other minorities of their civil rights, and advocates for equal treatment and opportunity in education for AAPIs and all people of color.

Asian Pacific American Bar Association of Pennsylvania is a non-profit organization serving a wide network of AAPI attorneys in Pennsylvania, Northern Delaware, and Southern New Jersey. APABA-PA is dedicated to the advancement of its members and the AAPI community, educates its members about issues critical to AAPIs, and advances the interests of AAPI attorneys and the local AAPI community.

Asian Pacific American Labor Alliance is the first and only national organization of AAPI union members and allies to advance worker, immigrant, and civil rights. Backed by the AFL-CIO, APALA has 18 chapters and a national office in Washington, D.C. Since its founding in 1992, APALA has played a unique role in serving as the bridge between the broader labor movement and the AAPI community.

Asian Pacific American Labor Alliance-Los Angeles Chapter works with student and community groups in support of the Dream Act and related outreach initiatives, through media and coalition efforts to educate and mobilize for civic participation to empower API workers and communities.

Asian Pacific American Legal Resource Center's mission is to advocate for equal justice for Asian immigrants with limited English proficiency in the Metro-DC area through providing linguistically accessible and culturally appropriate legal services that enable these individuals to defend and protect their rights and seek full participation in American society.

Asian Pacific American Network, one of five networks within the Coalition of Multicultural Affairs in ACPA-College Student Educators International, serves both to support Asian Pacific Islander Desi American (APIDA) students, faculty, and staff and to educate others student affairs professionals on the issues and concerns of the APIDA community in higher education.

Asian Pacific American Women Lawyers Alliance is comprised of attorneys, judges, and law students throughout California. Since its inception in 1993, APAWLA has been devoted to the inclusion, advancement, and empowerment of Asian Pacific American women by advocating, mentoring, and developing leadership within the legal profession and the larger community.

APACEvotes is rooted in the creation of affirmative action programs in the '60s and the preservation of affirmative action in Washington in 1998 and currently works to empower the APIA community through the power of the vote and other civic engagement and empowerment activities.

APACE C4 is rooted in the creation of affirmative action programs in the 60's and the preservation of affirmative action in Washington in 1998 and currently works to empower the APIA community through the power of the vote and other civic engagement and empowerment activities.

Asian Pacific Environmental Network organizes Asian Pacific American communities to achieve social, economic, and environmental justice for all people since its founding in 1993. Civil rights and affirmative action are essential components of achieving a more just society.

Asian & Pacific Islander American Health Forum has influenced policy, mobilized communities, and strengthened programs and organizations to improve the health of AAPIs since 1986. APIAHF's national policy work focuses on expanding access to health care, improving the quality of health care through cultural competency and language access, increasing research, and improving the collection, reporting, and analysis of data.

Asian Pacific Islander American Scholarship Fund is the nation's largest non-profit organization devoted to providing college scholarships for AAPIs

and has distributed more than $100 million in scholarships to deserving students. APIASF works to create opportunities for students after post-secondary education to develop into future leaders, serve as role models in their communities, and contribute to a vibrant America.

Asian Pacific Islander Legal Outreach is a community-based, social justice organization serving the AAPI communities of the Greater Bay Area. Since its founding in 1975, API Legal Outreach has advocated for the rights of AAPI youth and immigrants and their equal access to education. API Legal Outreach provides direct legal representation, community outreach and education, and comprehensive, holistic services.

Asian Pacific Islander Obesity Prevention Alliance is a community-based organization aimed at building healthier communities for AAPI families in Los Angeles. We strive to empower residents to change local environments so that communities can be healthier. In our work with youth, we consistently see the barriers to accessing higher education, and believe affirmative action is an important tool in expanding opportunities for all students.

Asian/Pacific Islander Recruitment and Retention Center is an organization committed to the service, empowerment, and mobilization of immigrant, refugee, and underserved Asian/Pacific Islanders by promoting higher education to empower

ourselves and challenge the economic and social inequalities facing our communities.

Asian Pacific Policy & Planning Council is an association of forty non-profit, community-based organizations in Los Angeles County. Since 1976, A3PCON serves as a voice, convener, and clearinghouse for AAPI communities, emphasizing the needs and rights of those with low income, immigrants, refugees and other disadvantaged populations, including the multiple barriers to accessing higher education faced by Pacific Islanders.

Asian Services in Action, Inc., founded in 1995, has the mission of empowering and advocating for AAPIs, and providing AAPIs access to quality, linguistically and culturally appropriate information and services. Stemming from the Midwest AAPI experience, ASIA believes Asian Americans continue to face barriers, discrimination, and other inequities.

Association of Asian Pacific Community Health Organizations is a national association of 35 community health centers, including 29 Federally Qualified Health Centers. AAPCHO advocates for the unique and diverse health needs of AAPI communities, including undocumented AAPIs, and the community health providers that serve their needs.

ASPIRE-Los Angeles is an undocumented Asian and Pacific Islander youth-led organization that fights for the rights of immigrants and other marginalized communities. We believe that access to education is a key aspect in creating a better society.

Therefore, equitable policies that consider race and ethnicity are especially important to educational access.

California Immigrant Policy Center advances inclusive policies that build a prosperous future for all Californians, using policy analysis, advocacy and capacity building to unlock the power of immigrants in California. Our statewide organization helps to develop and support pro-immigrant public policy aimed at improving the quality of life for all Californians.

California State University, Northridge, Dreams To Be Heard is a multicultural family advocating for immigrant rights through education, activism, and moral support to empower, liberate, and bring equality to our community. We feel that it's important to address the underrepresentation of marginalized communities, especially in communities of color.

Chinatown Community for Equitable Development is a community-based organization founded on empowering Chinatown residents to determine the future of their community as gentrification and development reshapes Los Angeles. With our mission of seeking social justice for underprivileged communities, we strongly believe that affirmative action is essential to ensuring that all communities have equitable opportunities to education.

Chinese American Service League, founded in 1979, was established as a non-profit community-based social service agency for the purpose of strengthening the physical, economic, and mental health of the Chinese community in the greater Chicago area, by 1) upgrading the family's economic level, 2) strengthening family structures, 3) easing the cultural transitions of individuals and families into American society, and 4) advocating for positive social change.

Chinese Progressive Association educates, organizes and empowers the low-income and working-class immigrant Chinese community in San Francisco to build collective power with other oppressed communities and to demand better living and working conditions and justice for all people. CPA believes that affirmative action programs are necessary to address the myriad educational and economic obstacles facing low-income Chinese immigrant families.

Claremont Colleges, 7-College Asian American Advisory Board, established in 2003, fosters AAPI community building across our five undergraduate and two graduate institutions. We stand in solidarity with other organizations at the Claremont Colleges and beyond to oppose the use of the AAPI community as a "wedge group" to discredit the need for affirmative action.

Claremont Colleges, Kasama Filipino American Student Association strives to foster awareness and recognition of Filipino American identity in the

Claremont Colleges through cultural, social, and outreach events. Upholding the *Malasakit* (Concern; Empathy) section of our constitution, Kasama intends to empower Filipino American communities through supporting affirmative action programs to promote equal opportunities in education.

Coalition of API Americans Collaborating Together to Unite the Southwest aims to empower, recognize, and organize student advocacy efforts within AAPI communities of the American Southwest. It is with this mission that we advocate for equitable, accessible, and inclusive educational opportunities.

Columbia Law School, Asian Pacific American Law Students Association is an academic, social, cultural, and political organization dedicated to cultivating a community of support within Columbia Law School, bringing awareness to AAPI contributions to the field of law, and facilitating discussion of issues and events that affect AAPI and other minority communities.

Cornell University, Asian American Studies Program, founded in 1987 as the first such program in the Ivy League, is committed to researching and teaching on the histories and experiences; identities, social and community formations; politics; and contemporary concerns of people of Asian ancestry in the United States and other parts of the Americas.

Cornell University, Society for Asian American Graduate Affairs is a community for graduate and professional students that either self-identify as

Asian American or are interested in topics relating to the Asian American experience. We provide members the opportunity to share academic and professional advice, and discuss issues of race, ethnicity, politics, and culture as they pertain to Asian Americans.

Council on American-Islamic Relations is the largest American Muslim civil rights organization in the country, with a national office in Washington, DC and 29 chapters nationwide. Dedicated to protecting the civil rights and liberties of all Americans, CAIR supports UT Austin's right to consider race along with other diversity factors, as race-conscious admissions have opened the doors of higher education to countless students of color.

Council for Native Hawaiian Advancement is a national network of 150 Native Hawaiian Organizations. Our mission is to enhance the cultural, economic, political and community development of Native Hawaiians. We are a strong voice on public policy, provide access to capital to underserved and low income Native Hawaiian communities, deliver capacity building services, and foster leadership development.

DRUM-Desis Rising Up & Moving is an organization of low-income South Asian immigrants, workers, and youth. As an organization of recent immigrants, we clearly see the injustices and inequalities that exist in American society. We join all efforts, including affirmative action policies, that seek to bring about equality.

East Coast Asian American Student Union is a non-profit organization that serves to inspire, educate, and empower those interested in Asian American issues. ECAASU was originally founded after the *Bakke* decision in 1978, in recognition of the need for an advocacy network capable of fostering mutual support and solidarity. ECAASU works to increase social equality for all minorities and to ensure equal opportunity for these communities.

Empowering Pacific Islander Communities, a non-profit organization based in Los Angeles, strives for the empowerment of Pacific Islander communities. The persistence of institutional discrimination in higher education presents a significant barrier to Native Hawaiians and Pacific Islanders. EPIC's mission is to mobilize Pacific Islander communities to foster opportunities for achieving social justice through advocacy, research and development.

Famili Pe Taha is a Tongan community-based organization based in Orange County, California. Through continuous partnerships with academia, healthcare networks and community-based organizations, Famili Pe Taha actively promotes healthier lifestyles through culturally-tailored education materials and navigation through the healthcare system.

Filipino Advocates for Justice has sought since 1973 to build a strong and empowered Filipino community by organizing constituents, developing leaders, providing services, and advocating for policies that promote justice and equity. FAJ envisions a

Filipino community with the power to advance social and economic justice and to realize democratic and human rights for everyone.

Filipino Migrant Center works for an empowered Filipino community actively engaged in the movement for local and global justice. Filipino Migrant Center aims to educate, organize and mobilize the low-income and working-class families of the Filipino community in Southern California and address issues and concerns that are inextricably linked to structural poverty, violence and discrimination, such as access to higher education.

Fresno Interdenominational Refugee Ministries has worked with refugees and immigrants to help them build a better life and communities of hope in the Central Valley of California. FIRM engages in culturally-sensitive work with issues related to health, housing, employment, child development, education, citizenship, and tenant's rights. We partner with a wide variety of churches and other organizations to accomplish this work.

GABRIELA Los Angeles is dedicated to building a strong Filipina women's mass movement, recognizing that the problems of the Filipina diaspora are linked to the root problems of the Philippines. We are committed to educating, organizing, and mobilizing unserved and under-served populations, including working-class women, immigrant women, and women with disabilities and/or mental health issues.

Gay Asian Pacific Islander Men of New York is a volunteer, membership-based community organization that empowers queer and transgender AAPI people in the greater New York metropolitan area. GAPIMNY is committed to advancing racial justice and LGBTQ rights for intersectionally marginalized communities, and supports affirmative action as a policy that equalizes opportunity.

Harvey Mudd College, Office of Institutional Diversity serves students, faculty, and staff through an intersectional, social justice education model of programming. The HMC OID strives to foster the campus's engagement with and understanding of critical issues, including bias, power, and privilege.

Hmong American Partnership is a non-profit organization focused on moving the refugee and immigrant community towards social and financial prosperity. HAP was founded in 1990 to serve a growing Hmong community in Minnesota, and in the last 25 years has grown to the largest Hmong non-profit organization in the United States, serving 7,000 clients annually from 18 nationalities.

Hmong Innovating Politics is a Sacramento-based grassroots organization whose mission is to strengthen the political power of Hmong and disenfranchised communities through innovative civic engagement and strategic grassroots mobilization. We believe that acknowledging and reducing educational disparities created by institutional and historical racism is

essential for communities to truly thrive in a socially and economically just democracy.

International Community Health Services is a non-profit community health center that provides culturally and linguistically appropriate health services to Seattle and King County's AAPI and broader community. Since opening in 1973 as a small, storefront clinic in Seattle, ICHS has become the largest AAPI community health center in Washington.

Japanese American Bar Association is one of the oldest AAPI bar associations in the country and consists of over 300 attorneys, judicial officers, and law students of Japanese and Asian Pacific Islander ancestry in Los Angeles and nationwide, including many who have benefitted from race-conscious admissions policies. JABA has a proud history of actively supporting equal opportunity and fair representation in higher education and the legal profession.

Japanese American Citizens League, Seattle Chapter is a member of our nation's oldest and largest Asian American civil rights organization. JACL monitors and responds to issues that enhance or threaten the civil and human rights of all Americans, and believes that affirmative action helps to balance the social, financial, and cultural factors that make it difficult for AANHPI and other communities of color to pursue higher education and other opportunities.

K-12 News Network does grassroots education news and civic engagement for America's rising majority of public school communities and are proud supporters of race-conscious college admissions. Primarily based in California, we are a national network of citizen media makers who watchdog public education for equity issues.

KAN-WIN, founded in 1990 in Chicago, empowers Asian American and immigrant survivors of gender-based violence. KAN-WIN's mission is to eradicate all forms of violence against women, including domestic violence and sexual assault, by empowering Asian American survivors and engaging the community through culturally competent services, community education and outreach, and advocacy.

Kizuna's mission is to build a vibrant Nikkei community by creating an empowering culture, igniting the passion of young Japanese Americans, and building collective identity. Kizuna is keenly aware that the Japanese American and Asian American community has greatly benefitted from race-conscious admissions programs and that many Native Hawaiian, Pacific Islander, and South East Asian students continue to face barriers and unequal access to higher education.

Korean American Bar Association of Southern California, founded in 1981, serves the Korean American community and promotes the interests of Korean-American attorneys throughout Southern California. KABA assists the Korean American

community in gaining access to the legal system, publicizes issues important to the Korean American community, and promotes the advancement of Korean attorneys in the judiciary and the political arena.

Korean American Coalition is a nonprofit, nonpartisan organization established in 1983 to promote the civil and civic rights interests of Korean Americans, increase civic and legislative awareness, and build the general social consciousness of the Korean American community. KAC endeavors to achieve these goals through education, community organizing, leadership development, and coalition-building with diverse communities.

Korean American Community Services, founded in 1972 in Chicago, addresses the needs of the Korean American community and enriches their lives through comprehensive community services. Serving more than 12,000 per year, KACS's mission is to celebrate Korean American heritage and provide educational, legal, health and social services for community members.

Korean American Resource and Cultural Center's mission is to empower the Korean American and multi-ethnic youth communities of greater Chicago through education, social services, organizing & advocacy, and culture. Standing up for educational attainment for all members of our community is a key part of our organizing and advocacy work.

Korean Resource Center, founded in 1983 in Los Angeles, empowers the Korean American, low-income

immigrant and people of color communities through social services, education, culture, advocacy, and grassroots organizing. KRC has organized and successfully advocated on behalf of immigrant students and their families to promote access to education.

Koreatown Immigrant Workers Alliance, founded in 1992, is a multiracial worker center dedicated to empowering low-wage workers and their families to collectively shape the conditions of their jobs, homes, neighborhoods, and cities. KIWA's interest in this case is rooted in its two decades of work to overcome racial and other forms of bias and structural inequity.

K.W. Lee Center for Leadership, founded in 2003, is a non-profit organization dedicated to providing youth with the tools and opportunities necessary to become future leaders. Based in the Koreatown area of Los Angeles, the Center advocates for equal access to educational opportunities for all youth, especially the Asian Pacific American community.

Law Offices of Vivek Mittal serves the moderate income South Asian community in immigration and civil litigation matters and firmly believes that race-conscious remedies such as affirmative action are necessary to help right the wrongs of racial bias and injustice.

Leadership Education for Asian Pacifics, Inc. is a national organization founded in 1982 with a mission to achieve full participation and equality for AAPIs through leadership, empowerment, and policy. With original programs in leadership training, public

policy research, and community education, LEAP advocates for diversity and inclusion in all sectors of society.

Little Tokyo Service Center is a comprehensive, place-based community development and social service organization committed to positive change for people and places. Over the last 35 years, LTSC has focused this work in the Little Tokyo neighborhood of downtown Los Angeles, in the broader Southern California Nikkei community, and in AAPI and low-income communities in greater Los Angeles.

Marshallese Educational Initiative promotes cultural and historical awareness of the Marshallese people and facilitates intercultural dialogue. MEI also works to increase educational attainment levels of Marshallese in Arkansas. The organization was created to blend scholarly research with practical outreach efforts to create national awareness, while also making a real difference in the lives of individual Marshallese.

Merced Lao Family Community Inc. is a non-profit, community-based organization, established in 1982, for the purpose of assisting Southeast Asians to acculturate into the mainstream of Western society. Merced Lao Family Community, Inc. advocates for equal access to educational opportunities, healthcare, and more.

Minnesota Asian Pacific American Bar Association is a non-profit legal organization comprised of AAPI lawyers, judges, and law students. MNAPABA

is committed to advocating for the Asian Pacific American community, promoting equal access to justice, and supporting equal opportunity in education and in the workplace.

National Council of Asian Pacific Americans believes that race-conscious holistic admissions programs benefit all communities of color, including Asian Americans, Native Hawaiians, and Pacific Islanders, in overcoming historical discrimination and ensuring equal opportunity and access to higher education.

National Federation of Filipino American Associations is a national, non-profit, non-partisan civil rights organization dedicated to promoting the interests and betterment of Filipinos in the United States. Founded in 1997, NaFFAA represents over 300 Filipino American community organizations and institutions, and works in coalition with other civil rights organizations to ensure that AAPIs enjoy equal opportunities in education, employment, and industry.

National Filipino American Lawyers Association is a national association of Filipino-American attorneys, judges, law professors, and law students dedicated to promoting the professional development, interests, and success of Filipino-American legal professionals nationwide. NFALA is the voice for the national Filipino-American legal community and strives to fight for equal opportunity and the rights of underserved minority groups.

National Korean American Service and Education Consortium was founded in 1994 by local community centers seeking to empower and improve the lives of Korean Americans and a national movement for social change. NAKASEC and its affiliates advocate for fair and affordable access to education for all students regardless of race, ethnicity or immigration status on the national and local level.

Native Hawaiian & Pacific Islander Alliance is a non-profit national organization dedicated to advocacy, education, research, and promotion of the health and well-being of all Native Hawaiian and Pacific Islanders within the United States.

Nikkei For Civil Rights & Redress is a grassroots community organization formed in 1980 to seek monetary reparations for Japanese Americans who were forcibly incarcerated during World War II. NCRR supports other ethnic and religious communities that have been similarly targeted, and strongly supports maintaining racially diverse, multi-cultural college campuses that reflect the diversity of the people that make up this country.

OCA-Asian Pacific American Advocates, established as the Organization of Chinese Americans in 1973, is a national pan-AAPI civil rights organization comprised of 50 chapters and dedicated to advancing the social, political, and economic well-being of all AAPIs. OCA supports race-conscious programs in higher education, as well as in the workplace, and

has a longstanding history of promoting racial equity in both spheres.

Orange County Asian and Pacific Islander Community Alliance, Inc. was established in 1997 with the mission to build a healthier and stronger community by enhancing the well-being of AAPIs through inclusive partnerships in the areas of service, education, advocacy, organizing, and research. OCAPICA is a social justice organization focused upon eliminating disparities and improving equity for underserved communities.

Pacific Islander Health Partnership serves indigenous Hawaiians and Pacific Islanders (NHPI) by engaging and educating island communities, training leaders, and building community capacity. PIHP believes that a holistic and inclusive college admissions process is critical for providing higher education opportunities to NHPI students who are underserved and underrepresented in health professions.

Philippine American Bar Association was formed to address legal issues confronting the Filipino American community as well as to meet the professional concerns of Filipino American lawyers in Southern California. PABA sponsors community legal clinics focusing on various areas of the law, provides pro bono legal services, and provides continuing legal education seminars and professional development opportunities for its members.

Pilipino Workers' Center was formed in 1997 to promote safe working conditions, living wages, decent living conditions, access to quality healthcare and basic human dignity. PWC advocates in the areas of employment, immigration, healthcare, housing and youth empowerment.

Pitzer College, Center for Asian Pacific American Students seeks to enrich and develop social, intellectual and personal growth in our students by providing Asian American resources as well as a welcoming, supportive environment. The Center is committed to racial equity and strongly supports race-conscious holistic admissions, as AAPIs have benefitted and continue to benefit from race-conscious programs and affirmative action.

Polynesian Community Center-Alaska provides community services to empower, perpetuate, and unify the Pacific Islander community within the State of Alaska.

Pomona College, Asian American Mentor Program is a student-run organization that fosters community among individuals who self-identify as Asian, Pacific Islander, Asian American, multiethnic, and/or multiracial. AAMP strives for inclusivity by building coalitions and promoting discourse with other communities within and beyond Pomona College.

Pomona College, Asian American Resource Center believes in strengthening the opportunities for access to higher education for historically under

represented and under served AAPI communities. We actively engage with our local Pacific Islander and Southeast Asian communities, whose struggle to realize their educational goals is made even more difficult by institutional barriers that continue to marginalize our community.

RAISE (Revolutionizing Asian American Immigrant Stories on the East Coast) is the first pan-Asian undocumented youth-led group on the East Coast. We aim to create safe spaces in our communities while advocating for humane immigration policies. Through political activism, leadership development, community education, and coalition building, we work to reclaim our dignity as pan-Asian undocumented peoples.

REACH: Research. Educate. Aspire. Change. History is a non-profit educational consulting firm based in New York City with a mission to collaborate with children, youth, families, school community, and civic leaders to conduct research on the challenges of curriculum and instruction in schools. REACH utilizes culturally relevant curriculum and teaching practices to help diverse students achieve academic success and to raise social justice awareness.

Reappropriate is one of the internet's leading Asian American feminism blogs. Founded in 2001, Reappropriate fosters online discourse for the Asian American, Native Hawaiian, and Pacific Islander community on topics of racial, gender and other forms of social justice.

Refugee & Immigrant Services Northwest is a center providing services for refugees and immigrants, in five counties (Snohomish, Skagit, Whatcom, Islands and San Juan). ~~**RISNW strongly supports affirmative action and believes that UT Austin's consideration of race as one factor in holistic admissions should be upheld**~~.

Rice University, Asian Pacific American Student Alliance, founded in 2013 as the only pan-Asian American student group on campus, strives to promote a sense of Asian American community at Rice by educating students and raising consciousness about the unique and shared historical, cultural and sociopolitical experiences of Asian Americans.

Scripps College, Asian American Student Union is a student organization that provides a space for weekly discussions on the history and current issues facing the Asian American community, both at Claremont Colleges and nationwide, through an intersectional lens. We support affirmative action because we strive to challenge institutional and structural racism and support communities that are historically underrepresented in higher institutions.

Scripps College, Scripps Communities of Resources and Empowerment stands in solidarity with other organizations at the Claremont Colleges and beyond to oppose the use of the AAPI community as a "wedge group" to discredit the need for and merits of affirmative action.

South Asian American Policy & Research Institute is a non-profit, non-partisan organization established in 2001 to improve the lives of South Asian Americans in the Chicago area, by using research to formulate equitable and socially responsible public policy. We believe that it is important to examine barriers in education as well as to overcome racial and other forms of bias.

South Asian Americans Leading Together is a national non-profit organization whose mission is to elevate the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT is committed to addressing discrimination and disparities that have affected, both historically and currently, the South Asian community and other communities of color.

South Asian Bar Association of North America is a voluntary bar association providing a vital link between the South Asian Bar and the South Asian community, which believes that a strong South Asian Bar is essential to protecting the rights and liberties of South Asians across the continent.

South Asian Bar Association of Northern California, founded in 1993, provides a voice to South Asian lawyers and law students and seeks to ensure that they are provided with an avenue to develop professionally. SABA-NC also seeks to protect the rights of South Asians. SABA-NC's interest is to ensure that our nation's schools have a diverse student

body which results in a diverse workforce benefiting all members of our communities.

South Asian Bar Association of Southern California represents over 600 attorneys in Southern California dedicated to the advancement and development of South Asian law students and attorneys and the broader community. SABA-SC strives to educate its community about relevant legal issues, increase the participation of South Asians in civic affairs and government, and foster goodwill, fellowship and unity among its community.

South Asian Helpline & Referral Agency is committed to serving the growing community of South Asians in Southern California through culturally-sensitive support services. Since 1991, SAHARA has been dedicated to eradicating inter-generational cycles of violence and promoting integration of South Asian immigrants.

South Asian Network is a grassroots, community-based organization dedicated to advancing the health, empowerment and solidarity of persons of South Asian origin in Southern California. SAN strongly supports open pathways to higher education for undocumented youth because access to education is a human right that should be accorded to all individuals.

Southeast Asian Coalition was founded in 1999 to address the lack of culturally and linguistically appropriate services for Southeast Asian immigrants in Central Massachusetts, including Laotians,

Cambodians, Vietnamese, and Burmese. SEAC's mission is to assist Southeast Asians in Central Massachusetts successfully integrate into mainstream society, thrive and become contributing citizens while maintaining their unique cultural identity.

Southeast Asian Community Alliance, created in 2002 in response to the lack of resources for Southeast Asians in Los Angeles, works with multi-ethnic teens in Echo Park, Chinatown, and Lincoln Heights. Our mission is to build an empowered Southeast Asian community through leadership development, education, advocacy, and community organizing.

Tafesilafa'i, founded in 1997 in the Samoan faith community, is an award-winning non-profit organization committed to social and economic justice for the Pacific Islander community. Tafesilafa'i takes existing social scaffolding and empowers leaders of each community to address justice issues that affects their specific community.

Taulama for Tongans is a non-profit community organization based in San Mateo. It is dedicated to improving the health of all Tongans through education, advocacy, research, and service. Taulama for Tongans supports race-conscious admissions as an important and essential tool to help communities that have faced racial discrimination, such as Pacific Islanders, to have an equitable opportunity to attend higher education institutions.

Tongan Community Service Center has been serving the Tongan community in Southern California

for almost 30 years. We collaborate with other AAPI agencies to serve all AAPI communities, and strongly support race-conscious admissions and oppose being used as a racial wedge.

Travis County Asian American Democrats is an organization that provides social and volunteer opportunities for progressive minded Asian Americans in Austin, Texas, which is home to the third-largest Asian American population in Texas.

UC Berkeley, Asian Pacific American Student Development has been supporting the retention and success of AAPI and Pilipin@ students at UC Berkeley for over 26 years. APASD provides advocacy for and with these communities, and promotes the retention of these students through self-empowerment and community-based opportunities.

UC Berkeley, Associated Students of University of California, Office of Senator Kathy Tran, is part of the Associated Students of University of California at UC Berkeley and is endorsed by and a representative of the progressive Asian Pacific Islander community at UC Berkeley.

UC Berkeley School of Law, Women of Color Collective provides a supportive space for African American, Asian American, Latina, Native American, and other women and transgender students of color at Berkeley Law. Through cultural, social, professional, educational and community service programs, WOCC enriches the educational experience at Berkeley

Law by advancing the needs of women and transgender students of color.

UC Davis, Asian Pacific Student Alliance promotes the general welfare and interests of AAPI faculty, staff, and students at UC Davis. It encourages recruitment, hiring and retention of AAPI staff and faculty at UC Davis; promotes career and personal development opportunities for AAPIs; and promotes, pursues, and implements diversity on the UC Davis campus.

UC Hastings College of the Law, Asian Pacific American Law Students Association supports AAPI law students by providing career and academic support, mentorship, and opportunities for alumni and the larger AAPI legal community. APALSA also seeks to address the issues and legal needs of the larger AAPI community through community service and outreach to AAPI students.

UC Irvine, Asian Pacific Student Association is a progressive network of constituent organizations that empower the AAPI community at the University of California, Irvine. Through a commitment to education, advocacy, community outreach, and active political participation, APSA promotes diversity throughout the community at large.

UCLA, Asian American Studies Center, founded in 1969, is a leading national research center on AAPIs. Its mission includes multidisciplinary interpretation and analysis of AAPI historical and contemporary issues, and it has produced over 100

articles, reports, and books examining AAPI topics such as admissions, educational attainment, and access to higher education.

UCLA, Asian American Studies Graduate Student Association is comprised of students pursuing master's degrees in Asian American Studies at UCLA. The association aims to protect and expand the field of Asian American studies by challenging the very definitions and boundaries of Asian America and academia in both our words and actions.

UCLA, Asian Pacific Coalition acts as a political voice for Asian Pacific Islander Desi American communities on campus. We are an umbrella organization that has 24 of these communities that seek to generally support the APIDA community through highlighting issues that affect it, and build solidarity with other communities of color.

UCLA, Samahang Pilipino is a progressive student organization that seeks to meet the needs of the Pilipin@ community on UCLA's campus and in the Los Angeles community. We believe that the needs of the Pilipin@ community are met with affirmative action programs and the inclusion of race in admissions and in the learning environment on college campus.

UCLA School of Law, Asian Pacific American Law Journal focuses exclusively on the legal, social and political issues affecting Asian Pacific American communities. APALJ provides a forum for legal scholars, practitioners and students to communicate

about emerging concerns and disseminating these writings to the general population.

UCLA School of Law, Asian Pacific Islander Law Students Association is a pan-Asian and multi-ethnic student organization at the UCLA School of Law dedicated to promoting the study and practice of law by AAPI students in order to address the legal and political needs of these communities. APILSA was founded in 1969 to advance the need for greater AAPI representation in the legal system.

UCLA School of Law, David J. Epstein Program in Public Interest Law and Policy is one of the nation's most innovative and successful law school public interest programs. Dedicated to training the next generation of public interest advocates and leaders, the Program offers an innovative and rigorous approach to legal education while educating and training students to engage in sophisticated representation of underserved communities and interests.

UC Santa Barbara, Asian American Studies Department, established in 1995 as the first academic department of Asian American Studies at a major research university, offers an interdisciplinary study of interlocking systems of inequality. Students learn to evaluate the existing literature in Asian American Studies, to analyze a variety of data on Asian Americans, to conduct original research, and to participate in internships and social justice issues.

UNITED SIKHS is a U.N. affiliated, international non-profit, non-governmental, humanitarian relief,

human development and advocacy organization aimed at empowering those in need, especially disadvantaged and minority communities across the world. UNITED SIKHS has provided community education and legal services on civil rights and discrimination issues for over 15 years.

United States Palestinian Community Network is a national grassroots organization representing Palestinians and Arabs across the United States. With close to 10 chapters, USPCN provides education, advocacy and direct action programs to support Palestinian human rights.

University of Massachusetts-Lowell, Center for Asian American Studies, established in 2013, promotes scholarship and education around the cultures, histories, and experiences of Asian Americans. These goals are achieved through our multidisciplinary collaborative research, expertise in Southeast Asian American studies, and collaborative ties with the Lowell community as well as national and international partners.

University of Michigan, Ford School, Students of Color in Public Policy was formed to create an environment at the Ford School and within the University of Michigan campus community in which public policy students of color can succeed emotionally, academically, and professionally.

University of Michigan Law School, Asian Pacific American Law Students Association seeks to foster and maintain a supportive community of AAPI

students at Michigan Law; to examine and cultivate a greater awareness of the relationship between the American legal system and AAPI law students and attorneys; and to influence the legal community to effect significant change in the legal system to meet the needs of the AAPI community.

University of San Francisco School of Law, Asian Pacific American Law Student Association is a pan-Asian student organization whose goal is to promote an inclusive legal community by raising cultural awareness and providing a platform for students to voice the Asian American perspective. We stand in solidarity with other minority communities who support diversity in higher education.

University of San Francisco School of Law, Vietnamese American Law Society is devoted to helping and ensuring the success of law students invested in the Vietnamese community. We recognize the internal class differences that exist among subgroups under the Asian American umbrella and stand in support of affirmative action with Southeast Asian students who seek access to higher education.

University of Southern California, Asian Pacific American Student Assembly is an assembly that provides support for 20 different AAPI organizations on campus, while also advocating and providing programming for AAPI undergraduates at USC. We stand in solidarity with other people of color for racial justice and equity, and advocate for immediate action

on embracing and instituting affirmative action for the benefit of all racial minorities.

University of Southern California, Student Coalition of Asian Pacific Empowerment, founded in 1978, is dedicated to bringing AAPI communities together both on campus and out. SCAPE seeks to educate and empower its members and supporters, and to advocate on behalf of the AAPI community on important social, political, and economic issues.

Washington State and India Trade Relations Action Committee, founded in 2007, is a non-profit public advocacy group with the mission of educating and advancing the cause of having equal access to financing, trade and economic development for AAPI and other minority communities, while promoting bilateral trade relations between Washington State and India.

West Coast Asian Pacific Islander Student Union serves to support AAPI students to enact progressive change across West Coast universities and communities. We advocate for race-conscious admissions programs in higher education because they are necessary for racial justice and provide holistic review that humanizes students.

Wing Luke Museum of the Asian Pacific American Experience is the only pan-AAPI museum in the nation. We work hand-in-hand with our diverse AAPI communities to bring to light injustices of our past, voice community perspectives on contemporary issues – including disparities in educational access

and achievement among Pacific Islanders and Southeast Asian Americans – and build a stronger, more equitable future for generations to come.

Yale Law School, Board of Asian Pacific American Law Students Association is a coalition of Yale Law School students and alumni that seeks to promote community among its members and to create a more diverse educational environment. APALSA is committed to advancing the interests of AAPI students and promoting diversity within the law school and the legal field.

Individual Amici

(Titles and institutional affiliations are provided for identification purposes only)

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